IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CONTEMPT PETITION NO.93 OF 2004
IN
NOTICE OF MOTION NO.1072 OF 2004
IN
SUIT NO.1070 OF 2004

Jayant Chunilal Kathrani. ...Petitioner.

Vs.

Jeshtaram Chunilal Kathrani and ors.
...Respondents.

A.C. Singh alongwith D.R. Shah for the Petitioner.

Mr. D.D. Madan with Mr. Vevi A. Rubens i/by M/s. Gagrat & Co. for the Respondent Nos. 1,2,6 and 7.

.....

CORAM : A.S. AGUIAR,J.
DATED : 11/3/2005.

P.C.:

1. Heard learned Advocates for the parties. The petitioner alleges contempt of the order dated 7.4.2004 by committing wilful breach of the undertaking given to this court and recorded in the said order. Statement recorded in the said order is as under :

"Mr. Madan - learned counsel for

> defendant no.7 makes a statement that the amounts standing to the credit of the deceased in the accounts will not be disbursed until further orders of this court. However, he also clarifies that some disbursement have already been made. The disbursements already made would be subject to result of Notice of Motion. Defendants 1 and 2 are directed to file affidavits disclosing the assets of the deceased and the manner in which they have been dealt with. No further ad interim orders are necessary. Notice of Motion to come on board in usual course".

The learned advocate for the petitioner points out that inspite of the said statement the respondents have disbursed the entire amount lying to the credit of the deceased in the company. It is pointed out that the statement in Para-9 of the affidavit of respondent filed in Notice of Motion No.1072 of 2004 in Suit No.1070 of 2004 indicates that the payments were made between the period from 1.4.2004 to 7.4.2004. Thus, according to Mr. Singh the entire amount of Rs.1,10,07,900/- has been disbursed in breach of the undertaking not to make any further

disbursement. However, the learned counsel for the respondents points out that Para-10 of the said affidavit discloses that sum of Rs.28,98,645/- still remains to be disbursed. There is therefore, no mis-statement or wrong statement made by the counsel. Learned counsel Mr. Madan on behalf of the respondents reiterates that some amount has paid and states that the balance amount would not be paid. Mr. Madan further points out that the affidavit of respondent no.1 shows that the payments so far made to the extent of of Rs.16,21,851/- has been transferred by way of book entry. Clearly there is no breach of the undertaking. Hence, petition is dismissed.

(A.S.AGUIAR, J.)